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SANDLER REIFF LAMB
ROSENSTEIN & BIRKENSTOCK, P.C.

**Frankie
Hampton**

1025 Vermont Ave NW, Suite 300
Washington, DC 20005
www.sandlerreiff.com
T: 202-479-1111
F: 202-479-1115

Digitally signed by Frankie Hampton
DN: c=US, o=U.S. Government,
ou=FEC, cn=Frankie Hampton
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June 4, 2015

Jeff S. Jordan, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: **MUR 6932**
Ready for Hillary PAC

Dear Mr. Jordan:

I am writing on behalf of Ready for Hillary PAC, and Amy Wills Gray, in her official capacity as treasurer, in response to a complaint filed by the Foundation for Accountability and Civic Trust (the "Foundation") against Hillary Clinton.

I. Introduction

In its April 1, 2015 complaint, the Foundation alleges that Hillary Clinton engaged in activities that extended beyond "merely testing the waters" and, therefore, "she should be deemed to be a candidate" under the Federal Election Campaign Act (the "Act").¹ The Foundation also alleges that super PACs conducted "campaign activities on Clinton's behalf, with which she has reportedly interacted and raised questions of coordination."² One of the super PACs named in the Complaint is Ready for Hillary PAC, now known as Ready PAC.

Ready for Hillary PAC was permitted under the Act to engage in all of the activity the Foundation describes in its complaint: (1) Ready for Hillary PAC could identify Hillary Clinton supporters and transition as many of them as possible over to her campaign if she became a candidate³ and (2) Ready for Hillary PAC staff persons could leave the PAC and join the campaign if she became a candidate.⁴ The Foundation does not provide any evidence to support a finding that there is any reason to believe Ready for Hillary PAC violated the Act.

In addition, while the Foundation asks the Commission to "investigate whether Clinton has taken actions that constitute prohibited coordination with the super PACs from which she benefits" it provided no evidence of prohibited coordination.

¹ Compl., at 1

² Compl., at 8

³ Compl., at 4, Ex. G

⁴ Compl., at 4, Ex. I

Ready for Hillary PAC acted in full compliance with the Act as it encouraged support for Hillary Clinton to become a candidate for President. The Foundation provides no evidence of any violation in its complaint. For these reasons, as discussed in detail below, we respectfully request that the Commission dismiss the Foundation's complaint with a finding that there is no reason to believe Ready for Hillary PAC violated the Act.

II. Factual and Legal Analysis

A. Background

On January 25, 2013, Ready for Hillary PAC registered with the Commission as an independent expenditure-only political committee that supports more than one candidate (these committees are commonly referred to as super PACs).⁵ Ready for Hillary PAC's purpose was to encourage support for Hillary Clinton to run for president. On May 28, 2014, Ready for Hillary PAC provided notice to the Commission through a Miscellaneous Form 99 that it had converted to a non-connected political committee that maintains a "non-contribution" account and created an additional depository account for the purpose of making contributions to candidates and committees in accordance with *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011).⁶ In 2014, Ready for Hillary PAC raised \$464,459 in Federal receipts (into the contribution account), \$8,435,147 in other federal receipts (into the non-contribution account), and made contributions to Federal candidate committees and other political committees totaling \$332,537.⁷

On April 12, Hillary Clinton announced her candidacy for president. That same day Ready for Hillary PAC amended its name to Ready PAC⁸ and has effectively shut down operations.

According to the Complaint, Ready for Hillary PAC was one of a few super PACs that conducted "campaign activities on Clinton's behalf, with which she has reportedly interacted and raised questions of coordination."⁹ The evidence supporting the Foundation's allegations against Ready for Hilary PAC consist solely of the following:

- 1) In 2013, Hillary Clinton complained to aides that Ready for Hillary PAC and another super PAC had a conflict about their activities that "needed to be sorted out."¹⁰
- 2) "The Executive Director for Ready for Hillary also stated that the 'goal is to identify as many supporters as possible and if she announces she's running to transition as many of them as possible to the campaign.'"¹¹

⁵ Ready for Hillary PAC, Statement of Organization, (filed Jan. 25, 2013)

⁶ Ready for Hillary PAC, Form 99 (filed May 28, 2014).

⁷ Ready for Hillary PAC, 2014 Year End Report (filed Jan. 31, 2015)

⁸ Ready PAC, Statement of Organization, (amended Apr. 12, 2015)

⁹ Compl., at 8

¹⁰ Compl., at 4, Ex. A

¹¹ Compl., at 4, Ex. G

- 3) "All twenty-nine of the Ready for Hillary staffers will have an opportunity to officially join Clinton's campaign, with six already being hired."¹²

The Foundation provides no other evidence supporting its allegation that Ready for Hillary PAC violated the Act.

Ready for Hillary PAC's primary purpose was to encourage support for Hillary Clinton to run for president. Ready for Hillary PAC built a list of supporters who it hoped would also sign up with the Clinton campaign if she became a candidate. Ready for Hillary PAC did not sell or give its list to any candidate or candidate's committee. A few Ready for Hillary PAC staff persons resigned from the PAC and then became employees of the Clinton campaign, Hillary for America. Their work for the PAC did not overlap with their work for the campaign.

B. Legal Analysis

The Complaint alleges that Hillary Clinton engaged in activities that went beyond testing the waters because, in part, Ready for Hillary PAC encouraged support for her to run for president and six former-PAC staff persons later joined Hillary for America.¹³ The Complaint also asserts that two years ago, when Hillary Clinton reportedly complained to her aides about a conflict between Ready for Hillary PAC and another super PAC, the alleged interaction "raised questions of coordination."¹⁴

1. Even if Authorized by Hillary Clinton, the Exploratory Activities of Ready for Hillary PAC would Not Trigger Candidate Status.

Under the Act, an individual is deemed a "candidate" if she receives contributions or makes expenditures in excess of \$5,000, or consents to another doing so on the individual's behalf.¹⁵ The Commission has created a limited exemption to the definitions of contribution and expenditure – and to the \$5,000 candidacy threshold – to allow individuals to conduct certain activities designed to "test the waters" to evaluate a potential candidacy.¹⁶ Funds received and payments made "solely for the purpose of determining whether an individual should become a

¹² Compl., at 4, Ex. I

¹³ Compl., at 4

¹⁴ Compl., at 8

¹⁵ 52 U.S.C. § 30101(2)(A), (B); 11 C.F.R. § 100.3(a)

¹⁶ 11 C.F.R. §§ 100.72, 100.131. Commission regulations describe five non-exhaustive examples of activities that indicate that an individual is not merely testing the waters, but has decided to become a candidate for federal office: (1) using general public political advertising to publicize his or her intention to campaign for federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activity designed to amass campaign funds that would be spent after she becomes a candidate; (3) making or authorizing written or oral statements that refer to her as a candidate for a particular office; (4) conducting activities in close proximity to the election or over a protracted period of time; and (5) taking action to qualify for the ballot under state law.

candidate" are not considered contributions under the Act.¹⁷ An individual who is testing the waters need not register or file disclosure reports with the Commission unless and until the individual subsequently decides to run for Federal office.

Even assuming that Hillary Clinton authorized Ready for Hillary PAC to receive and expend funds exceeding \$5,000 on her behalf as the Complaint alleges, she would not become a candidate as a result of those activities so long as they were related only to testing the waters.¹⁸

The Commission reviewed similar allegations – that Ready for Hillary PAC's activities triggered candidate status for Hillary Clinton – and on February 10, 2015 found no reason to believe a violation occurred based on the determination that that "with respect to Ready for Hillary PAC, the record reflects that it seeks to encourage Clinton to run and to build support for a potential Clinton candidacy, not an existing candidacy."¹⁹ Ready for Hillary PAC's communications after the Commission's review in MUR 6775 continued to be framed in terms of encouraging Hillary Clinton to run for president, and did not expressly refer to her as a candidate. For example, one of Ready for Hillary PAC's final emails, sent on April 1, 2015, stated that contributing to the PAC "shows Hillary that if she gets into this race" she will have grassroots support.²⁰ The actions of Ready for Hillary PAC continued, after the finding in MUR 6775, to be aimed at evaluating the feasibility of her candidacy and did not signify that she had decided to become a candidate.²¹

On February 10, 2015, the Commission found no reason to believe Ready for Hillary PAC's activities resulted in a violation "because neither Clinton nor Ready for Hillary PAC appear to have received contributions or made expenditures in excess of \$5,000 in connection with seeking her nomination or election to federal office, Clinton would not have triggered candidate status under the Act even if she had consented to the activities of Ready for Hillary PAC."²² Ready for Hillary PAC's activities did not change after the Commission's February 10, 2015 decision. Therefore, the Commission should once again find that there is no reason to believe Ready for Hillary PAC violated the Act as it continued to encourage support for Hillary Clinton to run for president.

2. Ready for Hillary PAC did not act in coordination with Hillary Clinton in violation of the Act.

Under the Act and Commission regulations, prohibited coordination occurs when a communication is paid for by a person, other than the candidate's campaign committee, and meets both prongs of a two-part content and conduct test.²³

¹⁷ 11 C.F.R. §§ 100.72, 100.131

¹⁸ 11 C.F.R. §§ 100.72, 100.131

¹⁹ MUR 6775 (Ready for Hillary PAC), FEC Factual and Legal Analysis, at 7.

²⁰ See Respondent Exhibit 1

²¹ See Advisory Op. 1981-32 (Askew)

²² MUR 6775, at 9

²³ 11 C.F.R. § 109.21(a)

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A communication satisfies the "content" prong of the two-part coordination test if the paid public communication references a presidential candidate and is (1) an electioneering communication,²⁴ (2) a republication of campaign materials, (3) expressly advocates the election or defeat of a clearly identified candidate, (4) references a presidential candidate within 120 days of any primary or caucus, in the state or district where the primary or caucus takes place, or (5) is the functional equivalent of express advocacy.²⁵

The "conduct" prong of the two-part coordination test is satisfied if: (1) the paid communication is created, produced, or distributed at the request or suggestion of the candidate, or her agents (2) the candidate, or her agents, are materially involved in decisions regarding the content, intended audience, means or mode of the communication, the specific media outlet used, the timing of the communication, or the size, prominence, or duration of a communication, (3) the communication is created, produced, or distributed after one or more substantial discussions about the communication takes place between the candidate, or her agent, and the person paying for the communication, (4) the candidate, or her agent, and the person paying for the communication use a common vendor, such as a pollster or media producer, (5) a former employee or independent contractor of the candidate shares non-public information about the candidate's plans, projects, activities, or needs with the person paying for the communication and that information is material to the creation, production, or distribution of the communication, or (6) in certain instances, candidate communications are disseminated, distributed, or republished.²⁶

The Foundation provides not one example of a communication that satisfies the "content" prong of the two-part coordination test and no evidence that Hillary Clinton or Ready for Hillary PAC engaged in any of the "conduct" described in the second part of the test. In fact, Ready for Hillary PAC did not make any communications that met the "content" prong or engaged in any activity that satisfied the "conduct" prong of the Commission's coordination regulations.

The Foundation, however, does provide evidence that there was no coordination of any kind between Hillary Clinton and Ready for Hillary PAC. The press report the Foundation relies on to support its allegation that Hillary Clinton interacted with Ready for Hillary PAC, however, confirms that "several sources familiar with the discussions said she wanted to keep her team distant from the work of the super PACs to avoid brushing up against rules forbidding coordination."²⁷ This evidence supports a finding that there was no coordination of any kind.

Finally, while there may be a coordination issue if a former-employee of a candidate goes to work for a person paying for communications supporting that candidate and, within 120 days of working for the candidate, the former-employee shares non-public information about the candidate's plans, projects, activities, or needs with his new employer, the person paying for the communication, and that non-public information is material to the creation, production, or

²⁴ 11 C.F.R. § 100.29

²⁵ 11 C.F.R. §§ 109.21(c)(1)-(5)

²⁶ 11 C.F.R. §§ 109.21(d)(1)-(6)

²⁷ Compl., Exhibit A, at 3

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distribution of the communication.²⁸ In this case, the staff persons left Ready for Hillary PAC and went to work for the campaign. There is no prohibition under the Act that limits or restricts persons from leaving the "independent side" to join a campaign. Therefore, it is permissible for former-Ready for Hillary PAC staff persons to subsequently work for Hillary for America.

In sum, Ready for Hillary PAC did not engage in prohibited coordination with Hillary Clinton or her agents on its communications. The communications did not meet the content standard required for prohibited coordination under Commission regulations. And Ready for Hillary PAC did not engage in any of the required conduct for a finding of prohibited coordination on communications. Ready for Hillary PAC did not satisfy either prong of the two-part coordinated communication test, therefore, it did not act in coordination with a candidate in violation of the Act.

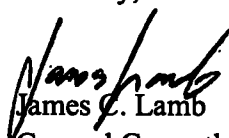
III. Conclusion

Ready for Hillary PAC was permitted under the Act to engage in all of the activity the Foundation describes in its complaint: (1) Ready PAC could identify Hillary Clinton supporters and transition as many of them as possible over to her campaign if she became a candidate²⁹ and (2) Ready PAC staff persons could leave the PAC and join the campaign if she ran.³⁰

In addition, while the Foundation asks the Commission to "investigate whether Clinton has taken actions that constitute prohibited coordination with the super PACs from which she benefits" there is no evidence to support a coordinaton violation.

For these reasons, we respectfully request that the Commission find no reason to believe that Ready for Hillary PAC violated the Act and that the Foundation's complaint be dismissed.

Sincerely,


James C. Lamb
General Counsel
Ready PAC

²⁸ 11 C.F.R. §§ 109.21(d)(5)

²⁹ Compl., at 4, Ex. G

³⁰ Compl., at 4, Ex. I